

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2868 of 1990

with

Special Civil Applications 2903 to 2907 of 1990

with

Special Civil Application No.6907 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

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S R MISTRY

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2868 of 1990  
MRS KETTY A MEHTA for Petitioners  
Mr.S.J. Dave, Assistant GOVERNMENT PLEADER,  
for Respondent Nos. 1 and 2  
MR BR GUPTA for Respondent No. 3, 4, 5, 6, 7,  
8, 9,10,11,12,13,14,15,16,17
2. Special Civil Application No 2903 of 1990  
MRS KETTY A MEHTA for Petitioners  
Mr.S.J. Dave, AGP, for Respondent Nos. 1 and 2.  
NOTICE SERVED for Respondent No. 3  
NOTICE UNSERVED for Respondent No. 4

3. Special Civil Application No.2904 of 1990  
MRS KETTY A MEHTA for Petitioner  
Mr.S.J. Dave, AGP, for respondents 1 and 2.  
NOTICE SERVED for Respondent No. 3, 4
  4. Special Civil Application No.2905 of 1990.  
MRS KETTY A MEHTA for Petitioner  
Mr.S.J. Dave, AGP, for respondents 1 and 2.  
NOTICE UNSERVED for Respondent No. 3, 4
  5. Special Civil Application No.2906 of 1990.  
MRS KETTY A MEHTA for Petitioner  
Mr.S.J. Dave, AGP, for respondents 1 and 2.  
NOTICE SERVED for Respondent No. 3  
NOTICE UNSERVED for Respondent No. 4
  6. Special Civil Application No.2907 of 1990  
MRS. KETTY A MEHTA for Petitioner  
Mr.S.J. Dave, AGP, for respondents 1 and 2.  
NOTICE SERVED for Respondent No. 3  
NOTICE UNSERVED for Respondent No. 4
  7. Special Civil Application No.2868 of 1990.  
MRS. KETTY A MEHTA for Petitioners  
MR S.J. Dave, AGP, for respondents 1 and 2.  
FRESH NOTICE REQD(N) for Respondent No.  
3, 9,10,11, 12,13,14,15,16,17  
NOTICE SERVED for Respondent No. 6
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CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE M.S.SHAH

Date of decision: 02/11/98

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

Petitioners, during the relevant time, were working as Deputy Mamlatdars in the Revenue Department. The petitioners had to pass obligatory departmental test and they were allowed maximum of three chances. In the year 1978, the Rules relating to departmental examinations were amended and the Gujarat Lower Revenue Qualifying Examination Rules, 1978 came into force. There was change in the number of papers and as per the new Rules, they need only appear in lesser number of papers. These petitioners had appeared for the previous examination and availed chances and thereafter, they appeared for the examination conducted under the Gujarat Lower Revenue Qualifying Examinations Rules, 1978. The authorities took the stand that the maximum three chances will include the chances already availed under the previous Revenue Qualifying Examination. The petitioners have challenged proviso to Rule 5 of the Gujarat Lower Revenue Qualifying Examination Rules, 1978.

The petitioners have also contended that respondents 3 to 17, who are members of the Scheduled Caste, Scheduled Tribe, were also included in the seniority list and they were juniors to the petitioners. When the question of reversion arose, the petitioners contended that these respondents should be reverted first as they are juniors.

Both the questions now raised by the petitioners were considered by a Division Bench of this Court. As regards the vires of proviso to Rule 5 of the Gujarat Lower Revenue Qualifying Examination Rules, 1978, it has been held by the Division Bench of this Court in A.P. Bhatt & Ors. v. Collector of Panchmahal & Ors., 33(2) GLR 805 that the said proviso to Rule 5 is violative of Articles 14 and 16 of the Constitution.

As regards second question raised by the petitioners, it has been held in R.K. Prajapati & Ors. v. State of Gujarat & Ors., 33(2) GLR 1422 that whenever any reversion or retrenchment is to be effected from the promotional cadre, those SC/ST candidates who are found to be occupying reserved percentage of posts in this cadre and who are not in excess of their quota of reservation even after the posts are reduced, cannot be disturbed and cannot be either terminated by way of retrenchment or reverted to lower cadre of posts as the case may be and to that extent, they are to be treated as insulated against such retrenchment or reversion as the case may be.

In view of the aforesaid two decisions, we direct that the petitioners may be deemed to have passed Lower Revenue Qualifying Examination in accordance with the Rules and they are not liable to be reverted on that count and if respondents 3 to 17 are within the reserved percentage, they shall not be reverted to the lower post and the petitioners' position in the seniority list be worked out by the authorities, as stated above. Respondents 1 and 2 are directed to prepare the seniority list and the petitioners may be given appropriate place in the seniority list at the earliest, at least within a period of three months from the date of receipt of a copy of this judgment. Rule is made absolute to the aforesaid extent.

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(apj)